plies as the fire started not on land but on a lighter of the appellants moored in a harbour. The appellants have not brought themselves within any of the defences open to them.

It is next submitted that the learned judge was wrong in apportioning the damages as between the two defendants. Mr. Hilborne argues that the learned judge treated the action as if it was a claim by the respondents against the first defendants and the appellants as joint tortfeasors which it is not. There is no substance in this submission. The learned judge did not in his judgment say that he was treating the two defendants as joint tortfeasors. This is a case of two independent tortfeasors causing the same damage to the respondents. The trial judge had found both defendants to blame and he was quite right to apportion the liability.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Chan, Goh & Co.*

THE "AMERICAN ASTRONAUT"; "AMERICAN ASTRONAUT" OWNERS & ORS. v. KIAN HIN HANG (PTE.) LTD.

[C.A. (Wee Chong Jin C.J., Chua & Rajah JJ.) September 4, 1979]

[Singapore — Civil Appeal No. 74 of 1978]

Shipping Law — Container — 580 cartons of toilet soap packed in sealed container — Short-delivery — Bills of lading — Conditions attached — Claim for loss allowed — Appeal — United States Carriage of Goods by Seat Act, 1936, s. 3(3), (4) & (8) — Carriage of Goods by Sea Act (Cap. 184), art. III para. 8 of Schedule.

Bills of lading — Conditions "House to Pier Container" and "shipper's load, stowage and count" on bill of lading — Effect of — United States Carriage of Goods by Sea Act, 1936, s. 3(3), (4) & (8) — Carriage of Goods by Sea Act (Cap. 184), art. III para. 8 of Schedule.

Containerisation — Conditions "shipper's load, stowage and count" qualifying carrier's liability in relation cargo packed and sealed in container — Not contrary to s. 3(8) of United States Carriage of Goods Act, 1936 — Carriage of Goods by Sea Act (Cap. 184), art. III para. 8 of Schedule

This appeal arose from a claim by the respondents (see [1979] 1 M.L.J. 216) as holders of a bill of lading against the appellants as carriers for short-delivery of 205 cartons of soap, part of an alleged shipment of 580 cartons on board the vessel "American Astronaut." The said 580 cartons were shipped in a sealed container from New York to Singapore under a bill of lading issued by the carrier in New York.

The "American Astronaut" arrived in Hong Kong and the cargo covered by the said bill of lading was there transhipped for delivery to Singapore on board the "American Mist."

The bill of lading in this case contained, *inter alia*, two notations, "House to Pier Container..." and "shipper's load, stowage and count."

The learned trial judge held that the plaintiffs/respondents were not disentitled by the said conditions in the bill of lading from relying on the admission that cartons to the number stated in the bill of lading were packed in the container and the defendants/appellants were accordingly liable to deliver the full number of cartons.

The defendants appealed.

Held, allowing the appeal: (1) the learned trial Judge had failed to appreciate that the notations used here were in respect of a container packed, sealed and loaded on the vessel by either the shipper or his agent and not in connection with cargo which could have been seen and checked;

(2) such phrases as "House to Pier Container" and "shipper's load, stowage and count" when applied to containers are not a form of non-responsibility clauses and therefore not contrary to section 3(8) of the United States Carriage of Goods Act, 1936 which corresponds with article III, para. 8 of the Schedule to the Carriage of Goods by Sea Act;

(3) the bill of lading in this case did not bind the carrier to any representation as to the condition or description of the contents so as to constitute an estoppel in favour of the respondents;

(4) the respondents had not discharged the onus of proving that 580 cartons of soap were shipped at New York in the appellants' ship "American Astronaut."

Case referred to:-

(1) *Spanish American Skin Co.* v. *M.C. Ferngulf* (1957) A.M.C. 611.

CIVIL APPEAL.

G. Panirselvam for the appellants.

Cheong Yuen Hee for the respondents.

Wee Chong Jin C.J. (delivering the judgment of the Court): This appeal arises from a claim by the respondents (plaintiffs) as owners and/or endorsees of a bill of lading against the appellants (defendants) as carriers for $16,912.50 being the cost of 205 cartons of Camay Soap, part of an alleged shipment of 580 cartons of such soap on board the vessel "American Astronaut" in a sealed container at New York and for carriage from New York to and delivery at Singapore under a bill of lading issued by the carrier in New York and dated October 8, 1974, but not delivered to the respondents, the consignees in Singapore.

The carriers issued the said bill of lading in conformity with the United States Carriage of Goods by Sea Act, 1936, relevant parts of which read as follows:—

"Section 3(3) After receiving the goods into his charge the carrier or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things —

(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

(b) Either the number of packages or pieces, or the quantity or weight, as the case may be, as furnished in writing by the shipper.

(c) The apparent order and condition of the goods: Provided, That no carrier, master or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

(4) Such a bill of lading shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraphs (3)(a), (b) and (c) of this section...."

(8) Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than

as provided in these Rules, shall be null and void and of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability."

The bill of lading showed, among other things:—

(a) the marks necessary to identify the goods under the Column "Marks and Numbers" (KHH Singapore No. 1/580);

(b) the number of packages under the column "Number of Packages" (580);

(c) the goods shipped under the column "Description of Packages and Goods" (Cartons: Toilet Soap);

(d) the gross weight under the heading "Gross Weight (10,950 kg.);

(e) the statement that "the goods or the containers, vans, trailers, palletized units or other packages said to contain goods herein mentioned were received in apparent good order and condition, except as otherwise indicated herein to be transported to the port of discharge named."

(f) in the column marked "Description of Packages and Goods" the notation "House to Pier Container No. USLU-2127077 Seal No." (No seal number had been inserted), and

(g) the further notation on the face of the said bill of lading "Shipper's load, stowage and count."

Now what do these two notations mean? It is in evidence that the notation "House to Pier Container" means, "the shipper packs and counts and stores his whole cargo into a designated container supplied by the shipping line. After packing, the container is sealed by the shippers themselves and shipped on board the first carrier. On arrival at the port of destination the subject container will be unpacked by the owner's representative, in this case, by the Port of Singapore Authority in Singapore as Singapore is a common user port." The notation "Shipper's load, stowage and count" means "the shippers themselves packed the container, stow them and count them without any representative from the shipping line concerned and the subject container is sealed by the shippers themselves." It is also in evidence that the respondents were aware that these notations would be put on the said bill of lading.

The "American Astronaut" arrived in Hong Kong and the cargo covered by the said bill of lading was there transhipped for delivery to Singapore on board the "American Mist". The "American Mist" arrived at the Port of Singapore and discharged the container at godown 48 at the Port of Singapore wharf. The container was taken into godown 48 where on December 5, 1974 it was opened, the contents thereof unpacked and stacked in a designated area by a contractor employed by Anglo-French Co. Pte Ltd., the Singapore agents for the owners of the two aforementioned ships. It would appear that no representative of either the Port of Singapore Authority or Anglo-French Co. Pte Ltd. or the respondents was present when the container was opened in godown 48. There was in the container cargo belonging to consignees other than the respondents.

On December 6, 1974 the respondents' delivery clerk went to godown 48 to take delivery of the 580 cartons of Camay Soap said to have been consigned to the respondents but there were only 375 cartons of Camay Soap in the godown which he took delivery of. The missing 205 cartons were never found and there was no evidence to account for the shortage.

It was in these circumstances that the respondents sued the appellants for failure to deliver the said 205 cartons.

At the trial the appellants contended:—

(1) that the expressions "House to Pier Container" and "Shipper's load, stowage and count" qualified the said bill of lading and that with such a qualification all that the carrier represents in the said bill of lading is the receipt by him of a container and that the statement as to the number of packages in the said bill of lading is not binding on the carrier;

(2) that, therefore, in the instant case the principle of estoppel did not apply;

(3) that it follows from (1) and (2) that the respondents had to call evidence to prove the shipment of the said 580 cartons on the "American Astronaut" at New York and that no such evidence had been called.

In reply the respondents contended (1) that the said bill of lading spoke for itself, (2) that if the 580 cartons had not been shipped then they relied on estoppel as endorsee of the said bill of lading, (3) that to exclude liability the appellants should have stated categorically "received one container" and not "580 cartons of toilet soap".

At the conclusion of the trial, judgment was entered for the respondents against the appellants in the sum of $16,912.50 and costs as taxed and for doing so, the learned trial judge in his Grounds of Decision said:—

"In my judgment, on the facts of this case and the law applicable, the plaintiffs were not disentitled by the conditions in the bill of lading from relying on the admission that cartons to the number stated in the bill of lading were packed in the container and the defendants were accordingly under an obligation to deliver the full number of cartons. On the evidence they had failed to do so. There had been a short delivery of 205 cartons for which the defendants were liable. The plaintiffs valued the 205 cartons at $16,912.50 which value was accepted by counsel for the defendants."

The appellants, being dissatisfied with the judgment appealed against it on, *inter alia*, the following grounds: —

(i) The learned judge erred in fact and in law in deciding that 580 cartons of toilet soap were shipped on the basis of the contents of the bill of lading without any evidence to the effect that 580 cartons were in fact shipped.

(ii) The learned judge erred in law in disregarding the qualifying notations in the bill of lading. In this regard the learned judge failed to hold that the bill of lading was not proof that 580 cartons of toilet soap were shipped.

(v) The learned judge erred in law and in fact in failing to hold that the plaintiffs had not proved that 580 cartons of toilet soap had been shipped under the relevant bill of lading.

(vii) The learned judge erred in law and in fact in

failing to hold that the plaintiffs had not adduced any evidence to establish estoppel pleaded in paragraph 2 of the Reply.

We agree with the learned trial judge that "the claim of the plaintiffs depended entirely on whether or not on a true construction of the bill of lading the plaintiffs had established that 580 cartons of toilet soap were shipped at New York in the defendants' ship 'American Astronaut' for delivery to the consignees in Singapore. The onus of proving that fact undoubtedly rested upon the plaintiffs".

It is in evidence that on October 1, 1974 the respondents had requested the Bangkok Bank Ltd., their bankers in Singapore, to have the Irrevocable Documentary Letter of Credit, established in New York for the purchase of the said 580 cartons, amended by including the words "House to Pier Container Stowage Acceptable" and that such Letter of Credit was so amended on or around October 4, 1974, that is some 4 days before the said bill of lading was signed. Mr. Jose Wong, Chief of Inward Bills Department of the said bank, in answer to the question, "What is understood by that expression 'shipper's load, stowage and count', replied, "The shipping Co. will have no knowledge of the packaging of the cargo. It is the supplier or the shipper who packs and loads the goods into the container" and again in answer to another question, "House to Pier means the same thing?", he replied "House to Pier indicates that the packaging is done in the supplier's warehouse or factory and the container will be towed to the pier intact". In the circumstances, it is not unreasonable to infer that the respondents knew what these two expressions meant as it was they who had asked their bank to have the Letter of Credit amended as stated and more so, as they did not choose to give evidence at the trial. It was on this basis that the sellers/shippers shipped the goods on the "American Astronaut" and the said bill of lading was signed by the carriers in the form that it was. This being so, we do not see how the respondents can assert estoppel as pleaded by them against the appellants.

It seems to us, on the tenor of the evidence before the court, that it was a third party, other than the seller or the carrier of the said 580 cartons, who having arranged for a container, loaded it not only with cartons of Camay Soap belonging to the seller/shipper but also with other cargo belonging to other consignees, then sealed the container and thereafter loaded it on board the "American Astronaut". In these circumstances the master or his agent would have had no opportunity of examining or finding out anything about the contents of the said container. Hence the notations by the carrier as they appear on the said bill of lading.

Counsel for the appellants relied on the following passage, more particularly the last two sentences thereof, in *Scrutton* on Charter Parties and Bills of Lading (18th Edition 1974) at page 379:—

"The use of containers as a method of carrying goods is becoming increasingly common, particularly in the field of combined transportation. The container is essentially no more than a sophisticated form of package, and it is thought that where the goods have been stowed in the container by the shipper, the carrier would be entitled to rely on a defence of 'inherent vice' or 'insufficiency of packing' if the goods were damaged because of some defect in the container or in the manner of stowage. Where, however, the carrier has supplied the container to the shipper, the carrier has the liability of a hirer (subject to appropriate exceptions in the contract of carriage), and warrants that the container is as fit for the purpose for which it is hired as reasonable care and skill can make it. The warranty is not excluded by the fact that the shipper has been given an opportunity to examine the container. A container packed by the shipper is usually acknowledged as 'one container in apparent good order and condition said to contain (the contents) as declared by the shipper' An acknowledgment in this form does not, it is thought, bind the carrier to any representation as to the condition or description of the contents so as to constitute an estoppel in favour of an indorsee of the bill of lading."

The learned trial judge gave no weight to the passage saying that it merely represents the thinking of the authors of the treatise and that it was not supported by any reported decision. "In any case," the learned trial judge went on to say, "the defendants had clearly not used the very precise words of the suggested formula". But is this really the position in the instant case.

The said bill of lading on a full reading of it states: "Received the container . . . (namely Container No. USLU-412707) . . . said to contain goods herein mentioned (namely 580 Cartons of Toilet Soap) in apparent good order and condition . . . ." It seems to us that this is in the precise words of the formula suggested by the learned authors namely, "one container in apparent good order and condition said to contain (the content) as declared by the shipper." The carriage of goods by sea in a container is a feature in the carriage of goods by sea that has come into use during the last 20 years or so. And because of the nature of a container and the kind of use to which it is put in the carriage of goods by sea it would not always be possible for the carrier to set out in a bill of lading the particulars the carrier is obliged, on demand by the shipper, to give under the Carriage of Goods by Sea Act without in some way qualifying it, if found necessary. The legislation in regard to the carriage of goods by sea was formulated and passed before container traffic became an accepted mode of carriage of goods by sea. The two qualifying notations used on the said bill of lading are now well understood recognised and acted upon by the banking, shipping and trading communities throughout the commercial and shipping world. The said notations are used in connection with container transport and do not relate to goods which the master or his authorised agent could reasonably see and check before the bill of lading is signed either by him or his authorised agent. The learned trial judge failed to appreciate that the notations used here were in respect of a container packed, sealed and loaded on the vessel by either the shipper or his agent and not in connection with cargo which could have been seen and checked. It was this failure which made him place reliance on the American case of *Spanish American Skin Co.* v. *M.C. Ferngulf*,[1] which was not a container case but one which related to the weight of 60 bundles of sheep skin shipped as such.

We are of the view that such phrases as "House to Pier Container" and "Shipper's load stowage and count" when applied to containers are not a form of non-responsibility clauses and therefore not contrary to section 3(8) of the United States Carriage of Goods

Act, 1936 which corresponds with Article III, paragraph 8 of the Schedule to the Carriage of Goods by Sea Act (Chapter 184).

In view of what we have said we find ourselves in agreement with the learned authors of the above cited treatise. Our view of the law on this matter is further reinforced by a passage at page 107 of *Tetley* on Marine Cargo Claims (Second Edition) which reads as follows:—

"The phrase 'Shippers load stowage and count' used in reference to containers, however, is a proper form of qualification where the carrier cannot verify the contents of a container packed and sealed by the shipper."

We are of the view therefore that the bill of lading in the present case does not bind the carrier to any representation as to the condition or description of the contents so as to constitute an estoppel in favour of the respondents.

This being so the respondents, in our judgment, have not discharged the onus of proving that 580 cartons of Camay Soap were shipped at New York in the appellants' ship "American Astronaut" and accordingly their claim must fail. We therefore allow the appeal with costs.

Appeal allowed.

Solicitors: *Drew & Napier; Chan, Goh & Co.*

RE NICHOLAS ADDISON PHILLIPS, Q.C.

[O.C.J. (Rajah J.) April 3, 1979]

[Singapore — Originating Motion No. 1 of 1979]

Legal Profession — Admission of Queen's Counsel — Shipping case — Application disallowed — Legal Profession Act (Cap. 217), s. 18.

This was an application under section 18 of the Legal Profession Act for the admission of a Queen's counsel, Nicholas Addison Phillips to argue an appeal in the Court of Appeal for the appellants in Civil Appeal No. 67 of 1978. The appeal arose from a claim by the plaintiffs/respondents for the sum of $197,942.50 being the amount of damages allegedly suffered by them. The plaintiffs/respondents claimed that the defendants agreed to provide drydock space in their shipyard for the general repair of the plaintiff's ship "Master Stelios" and that the defendants would provide the facilities for a screwshaft survey. The defendants failed to provide the facilities for the said screwshaft survey, as a result of which the plaintiffs had to put the ship in drydock again at Rotterdam thus incurring loss and damage.

The parties interested in the application *viz.*, the Attorney-General, the Law Society and the plaintiffs/respondents objected to the above application.

Held: this was not a proper case where a person should be admitted under the provisions of section 18 of the Legal Profession Act as the case was not of that complexity as to be beyond the reach of the solicitors for the appellants/defendants.

ORIGINATING MOTION.

Tang See Chim for the applicant.

J. Grimberg for the plaintiff/respondent.

K.E. Hilborne for the Law Society.

S. Thyagarajan for the Attorney-General.

Rajah J.: This is an application under section 18 of the Legal Profession Act (Chapter 217) seeking the admission of a Queen's Counsel of England (the applicant) to argue an appeal in the Court of Appeal for the appellants in Civil Appeal No. 67 of 1978.

The relevant parts of section 18 read as follows:—

"18.—(1) Notwithstanding anything to the contrary contained in this Act the court may for the purpose of any one case admit to practise as an advocate and solicitor any person—

(a) who holds Her Majesty's Patent as Queen's Counsel;

(b) who does not ordinarily reside in Singapore or Malaysia but who has come or intends to come to Singapore for the purpose of appearing in the case; and

(c) who has special qualifications or experience for the purpose of the case.

(2) Any person applying to be admitted under the provisions of this section shall do so by originating motion verified by an affidavit of the applicant or of the advocate and solicitor instructing him stating the names of the parties and brief particulars of the case in which the applicant intends to appear and the originating motion and affidavit or affidavits shall be served on the Attorney-General, the Society and the other party or parties to the case and at the time of such service the applicant shall pay a fee of one hundred dollars to the Society for its costs incurred in the application.

(3) Before admitting a person under the provisions of this section the court shall have regard to the views of each of the persons served with the application."

The parties in the said Appeal are:—

Appellants: Keppel Shipyard (Pte) Ltd.

Respondents: Monvia Motorship Corporation.

The appeal arises from a claim (Suit 503 of 1975) by the plaintiffs/respondents for $197,942.50 being the amount of damages allegedly suffered by them. The relevant parts of the amended statement of claim read as follows:—

"1. As a result of exchanges of telex messages between the defendants and the plaintiffs' agents, Messrs. Phocean Ship Agency Limited of London, an agreement was concluded between the plaintiffs and the defendants on or about October 8, 1973 by which the defendants were to provide drydock space in their shipyard for and execute general repair work on the plaintiffs' ship 'Master Stelios' in October, 1973.

2. It was a term of the said agreement made expressly and/or by implication from the circumstances thereof that the defendants would provide the facilities for a screwshaft survey.

3. In breach of the said agreement the defendants failed or refused to provide the facilities for the said screwshaft survey, as a result of which the plaintiffs had to put the ship in drydock again at Rotterdam in order to complete the said screwshaft survey.

4. By reason of the foregoing, the plaintiffs have suffered loss and damage."

The amended defence to the statement of claim reads as follows:—

"1. The defendants make no admission as to paragraph 1 of the Statement of Claim and put the plaintiffs to strict proof thereof. The defendants will contend that the plaintiffs' instructions as contained in the telex dated October 8, 1973 did not include a screwshaft survey.

2. Paragraphs 2 and 3 of the Statement of Claim are denied.

3. The defendants put the plaintiffs to strict proof of paragraph 4 of the Statement of Claim.

4. Save as hereinbefore expressly admitted, the defendants deny each and every allegation contained in the Statement of Claim as if the same were set out seriatim and specifically traversed."

By judgment dated the 6th day of October, 1978 judgment was given for the plaintiffs/respondents in the sum claimed with interest and costs.

It was contended for the appellants that "the matters in issue are of great complexity involving the law relating to the formation of ship-repair contracts